IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 1770 of 2007(I)

PETITIONER:

M/S.SAFE CARE RUBBER PRODUCTS PVT.LTD.,
REGD. OFFICE AT PLOT NO.19, COCHIN SPECIAL
ECONOMIC ZONE, KAKKANAD, KOCHI-37,
REPRESENTED BY ITS DIRECTOR GERGEKUTTY MANUAL.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SMT.TULASI PANICKER

RESPONDENTS:
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1. **RUBBER BOARD, SUB JAIL ROAD,**
   KEEZHKUNNU, KOTTAYAM, REP.BY ITS SECRETARY.

2. **THE DEPUTY DIRECTOR (ED),**
   RUBBER BOARD, P.B.NO.1122, SUB JAIL ROAD,
   KOTTAYAM-686 002.

3. **THE DEVELOPMENT COMMISSIONER,**
   COCHIN SPECIAL ECONOMIC ZONE,
   DEPARTMENT OF COMMERCE, GOVERNMENT OF INDIA,
   MINISTRY OF COMMERCE & INDUSTRY,
   KAKKANAD, KOCHI-37.

W.P.(C) NO.1770/2007

*** ADDL.R4 IS IMPLEADED**

ADDL. R4. THE MANAGING DIRECTOR,
M/S.TABA GLOVES PVT. LTD.,
PLOT NO.19,
COCHIN SPECIAL & ECONOMIC HOME
KAKKANAD, KOCHI- 37.

IS IMPLEADED AS ADDL. R4 AS PER ORDER DT. 13.5.07 IN IA. 3615/2007.

*** ADDL. R5 IMPLEADED**

R5. THE BANK OF INDIA , M.G.ROAD BRANCH,
ERNAKULAM REP.BY ITS CHIEF MANAGER

ADDL. R5 IMPLEADED AS PER ORDER DT. 21.06.2007 IN IA. NO.8272/2007.

BY ADV. SRI.JOSEPH MARKOSE
SRI.MITHUN MARKOS
SRI.S.JAMAL
SRI.BIMAL K.NATH
SRI.E.M.SUNIL KUMAR
SRI.DEVAN RAMACHANDRAN
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
SRI.SUMESH KUMAR.N.C.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.1770/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT. 31.3.06 ISSUED BY THE 1ST RESPONDENT.

EXTP2:- COPY OF THE OFFER LETTER DT. 3.8.05 SENT BY THE PETITIONER TO BANK OF INDIA.

EXT.P3:- COPY OF THE PROVISIONAL ALLOTMENT LETTER DT. 17.5.06 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXST.P4:- COPY OF THE FINAL DEBONDING ORDER DT. 22.6.06.

EXT.P5:- COPY OF THE LEASE DEED NO.2156/06 BEWTEEN THE PETITIONER AND THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE NOTICE DT. 6.11.06 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.

EXT.P7:- COPY OF THE JUDGMENT DT. 29.11.05 IN WRIT PETITION NO.29927/06.

EXT.P8:- COPY OF THE NOTICE DT. 12.12.06 ISSUE BY THE 2ND RESPONDENT.

EXT.P9:- COPY OF THE REPLY DT. 19.12.06 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P10:- COPY OF THE COMBINED ORDER PASSED BY THIS HONOURABLE COURT IN IA. 11074/05 & IA. 11395/05 IN WPC NO.23527/03 DT. 12.8.05.

EXT.P11:- COPY OF THE ORDER DT. 8.1.07.

EXT.P12:- COPY OF THE MOU DT. 26.5.05 EXECUTED BETWEEN THE PETITIONER COMPANY AND M/S. TABA GOLVES PRIVATE LTD.

EXT.P13:- COPY OF THE POSSESSION NOTICE DT. 1.3.05 ISSUED BY THE CHIEF MANAGER AND AUTHORISED OFFICER OF BANK OF INDIA.

EXT.P14:- COPY OF THE SALE NOTICE DT. 14.5.05 PUBLISHED BY THE BANK.

EXT.P15:- COPY OF THE ACKNOWLEDGEMENT DT. 17.6.05 ISSUED BY THE 5TH RESPONDENT FOR RECEIPT OF RS. 5 LAKH FROM THE PETITIONER.

EXT.P16:- COPY OF THE CERTIFICATE NO.538/DF7.74 DT. JULY 26TH 2007 ISSUED BY SIDBI TO THE PETITIONER CONFIRMING THE PAYMENT OF RS. ONE CRORE TO THE 5TH RESPONDENT ON BEHALF OF THE PETITIONER.

W.P.(V) NO.1770/2007

RESPONDENTS EXHIBITS

EXT.R5(1):- COPY OF THE LETTER SENT BY THE 4TH RESPONDENT TO THE 5TH RESPONDENT DT. 4.6.05.

EXT.R5(2):- COPY OF THE LETTER SENT BY THE 4TH RESPONDENT TO THE 5TH RESPONDENT DT. 9.8.05.

EXT.R5(3):- COPY OF THE LETTER SENT BY THE 4TH RESPONDENT TO THE 5TH RESPONDENT DT. 23.2.06.

EXT.R5(4):- COPY OF THE LETTER SENT BY THE 4TH RESPONDENT TO THE 5TH RESPONDENT DT. 26.4.06.

EXT.R5(5):- COPY OF THE LETTER NO.MGR .MS. 17 SENT BY THE 5TH RESPONDENT TO SIDBI DT. 27.4.06.

EXT.R5(6):- COPY OF THE LETTER SENT BY THE 4TH RESPONDENT TO THE 5TH RESPONDENT DT. 28.6.06.

EXT.R5(7):- COPY OF THE RECEIPT ISSUED BY THE 4TH RESPONDENT ACCEPTING BACK POSSESION OF FACTORY DT. 30.6.06.

EXT.R5(8):- COPY OF THE LETTER SENT BY THE 4TH RESPONDENT TO THE 5TH RESPONDENT DT. 1.7.06.

/TRUE COPY/

P.S. TO JUDGE

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ANTONY DOMINIC, J.

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W.P.(C) No. 1770 OF 2007 I
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Dated this the 21st August, 2007

J U D G M E N T

The prayers in this writ petition are for quashing Ext. P11 and for a declaration that the petitioner is not liable for the cess that is due from the 4th respondent to the 1st respondent. Petitioner also seeks a direction to respondents 1 and 2 to issue procurement licence to the petitioner expeditiously.

2. The 4th respondent was engaged in running a rubber gloves manufacturing unit in plot No. 19 of the Cochin Special Economic Zone. For various reasons the factory became defunct and the 5th respondent-Bank took over possession of the machineries and other assets of the 4th respondent by Ext. P13 on 1-3-2005. Ext. P14 is a sale notice published by the bank inviting offers for the assets of the 4th respondent specifying 17-6-2005 as the last date for submitting offers. In the meantime on an application made by the petitioner to the Development Commissioner the plot was provisionally

allotted to it from 17th May, 2006. Petitioner claims that with the knowledge of the 5th respondent-Bank, they entered into negotiation with the 4th respondent which culminated in Ext. P12 memorandum of undertaking whereunder the petitioner agreed to pay Rs.125 lakhs to the 5th respondent-Bank and thereupon the machineries should be released by the bank to the petitioner without any resistance from the 4th respondent. In Ext. P12 the 4th respondent also agreed that they shall discharge all other liabilities.

3. While so, in pursuance of Ext. P3 provisional allotment, the Development Commissioner regularised the lease in favour of the petitioner and Ext. P5 lease deed was also executed. It is seen that progress was made for purchase of machineries from the 4th respondent and the petitioner had made a payment of Rs.15 lakhs to the bank under cover of Ext. P15 letter dated 17-6-2005. Petitioner also states that the balance amount of Rs.1,10,00,000/- was also paid subsequently and in fact Ext. P16 shows that they had paid an amount of Rs.1 crore by availing of a loan from SIDBI. According to the petitioner, on such payment being made to the

bank, machineries and other movable properties were released to the petitioner and the 4th respondent also effected transfer of title in its favour and the petitioner started running the unit since then.

4. Thereupon the petitioner made an application to the Rubber Board when it was informed that the 4th respondent owed Rs.18,33,629/- towards rubber cess, out of which Rs.5,90,624/- was towards interest alone. Thereafter Rubber Board issued Ext. P6 notice to the petitioner which was called in question before this Court in W.P.(C) No. 29927 of 2006 with a prayer to direct the Rubber Board to issue rubber purchase licence also. That writ petition was disposed of by Ext. P7 judgment directing the Rubber Board to afford an opportunity of hearing the petitioner and pass orders on his application. It was further directed that if there is a charge on the machinery or the property of the previous owner by virtue of operation of any provision of any agreement or regulation, the Rubber Board will furnish a copy of the same to the petitioner to enable it to raise its objection.

5. In pursuance of the aforesaid direction in Ext.

P7, the Rubber Board issued Ext. P8 letter which stated that the 4th respondent was a defaulter of an amount of Rs.18,33,629/- and that the matter has been reported for revenue recovery through the District Collector, Kottayam under requisition dated 18-3-2005. Thereafter, the petitioner was heard and final orders were passed by Ext. P11 dated 8-1-2007 and the only reasoning is the following:

> "The explanation of the applicant that there is no specific rule compelling them to clear the cess arrears is not tenable. The basic objective of issuing licence is to levy cess on the production of rubber for the development of rubber industry in the country. This fact cannot be ignored while issuing licence. In this context granting licence to you to run a factory at the very same premises using the machinery purchased from the defaulter is against the best interest of the exchequer. The contentions that you are not bound to know whether M/s. Taba Gloves Pvt. Ltd., is registered unit with Rubber Board and that you are not liable to clear cess arrears are not acceptable. The MOU dated 26th May 2005 between you and M/s. Taba Gloves Pvt. Ltd., proves that you were well aware of the fact that M/s. Taba Gloves Pvt. Ltd., was a defaulter of cess. The contention that you purchased the machinery from the Bank is also not sustainable on the face of the MOU.
>
> In view of the above, your application for licence cannot be approved until M/s. Taba Gloves Pvt. Ltd., furnish a bank guarantee for the amount covered by the

> Revenue Recovery Proceedings or clear the cess arrears of Rs.18,33,629/-. And the application is accordingly disposed of."

It is challenging Ext. P11 and seeking consequential directions that this writ petition has been filed.

6. During the pendency of this writ petition, petitioner sought orders directing the Rubber Board to issue licence in its favour. Considering the said request, this Court passed orders dated 22-1-2007 and 13-1-2007 directing the petitioner to remit Rs.3 lakhs each and on that condition temporary licence was ordered to be issued. It is submitted by counsel for the petitioner and the counsel for the Board that the payment was made and that licence was also issued.

7. The learned counsel for the petitioner contended that there is no statutory or contractual right available to respondents 1 and 2 to enforce the liability of the 4th respondent against the petitioner and therefore the proceedings initiated against it and also the refusal to issue licence, is arbitrary and illegal. Learned counsel for respondents 1 and 2 fairly submits that there is no statutory or contractual provision enabling the 1st respondent-Board

to proceed against the petitioner for realising the liability of the 4th respondent. On the other hand he would submit that the petitioner got the assets of the 4th respodnent with the full knowledge of the liability towards rubber cess. Therefore, according to counsel, petitioner should be saddled with liability to pay the amount. Counsel also submits that the petitioner has a right of appeal to the Central Government against Ext. P11 which has not been availed of. The 4th respondent entered appearance and submits that despite its financial difficulties and though the unit itself has been sold, it is still willing to discharge the liability. They have made a representation to the Chairman of the Board seeking waiver of the interest that has been levied on it and its request is allowed, they are willing to discharge the liability in full. The 5th respondent-Bank has also filed a counter affidavit.

8. I considered the submission of the counsel for the petitioner and the counsel for the respective respondents. Admittedly, the liability is that of the 4th respondent. Respondents 1 and 2 can enforce the

said liability against the petitioner, provided there is a statutory provision enabling them to proceed against the petitioner. Otherwise there should be a contractual provision enabling it to do so. As rightly conceded by counsel for the Board, neither of these are available in which case it is not possible for respondents 1 and 2 to proceed against the petitioner. Therefore the stand of respondents 1 and 2 that the petitioner should discharge the liability of the 4th respondent has no legal foundation and to say the least is unreasonable and arbitrary.

9. The other contention raised by respondents 1 and 2 is that the petitioner got the property with the knowledge that the 4th respondent was a defaulter of rubber cess to the Board. Even if the petitioner knew that there was such a liability, as already held by me, in the absence of any statutory or contractual liability for a transferee, the petitioner cannot be saddled with that liability. Even otherwise, nothing has been placed on record to conclude that the petitioner had knowledge of the liability of the 4th respondent. In fact, the 5th respondent-Bank has filed

a counter affidavit and in paragraph 9 of the affidavit the bank has averred that it had no knowledge of the 4th respondent's liability and that the Board had never put the bank on notice of the liability. The 1st respondent also has no case that prior to Ext. P6 notice dated 6-11-2006, the Board had put the petitioner on notice of the liability. Therefore, I am not prepared to say that there was any element of fraud or even dishonesty involved in the transaction between the petitioner and the 4th respondent.

10. The last argument raised by respondents 1 and 2 is the right of appeal available to the petitioner under Section 23 of the Rubber Act. In a case like this I do not think that the petitioner should be relegated to the alternative remedy even if it is available. In any case after admitting this writ petition and keeping it pending for so long and passing various conditional interim orders, it will be unfair to to relegate the petitioner to such statutory remedies.

11. Reasonableness and non-arbitrariness are the hall marks of an action by the State. Judged from any

angle, the action on the part of the 1st respondent, admittedly a State within the meaning of Article 12, does not satisfy the requirements of reasonableness or fairness. I am fully satisfied that the stand of respondents 1 and 2 is unreasonable and the petitioner is entitled to the reliefs sought for. Accordingly, I declare that the petitioner cannot be made liable for the cess dues of the 4th respondent and quash Ext. P11. There will be a direction to respondents 1 and 2 to issue rubber procurement licence to the petitioner as expeditiously as possible, on their satisfying the conditions which are specified by the Board.

12. I have already noted that in terms of the interim orders dated 22-1-2007 and 13-3-2007 the petitioner has paid Rs.6 lakhs for obtaining temporary licence. In view of my findings herein above, the retention of this amount is illegal. Therefore, I direct that the amount so deposited by the petitioner as per the interim orders of this Court shall be refunded after appropriating the liability of the petitioner, if any, within one month from the date of receipt of a copy of this judgment.

The writ petition will stand allowed without any order as to costs.

ANTONY DOMINIC
JUDGE

jan/-